

**STATE DEPARTMENT OF EDUCATION
JANUARY 22, 2015**

SUBJECT

Temporary Rule - IDAPA 08.02.03.109 – Rules Governing Thoroughness

REFERENCE

August 2010

Board approved Temporary and Proposed rule change to IDAPA 08.02.03.109. regarding the Special Education Individualized Education Programs.

Novemer 2010

Board approved pending rule changes to IDAPA 08.02.03.109 regarding the Special Educaiton Individualized Education Programs

APPLICABLE STATUTE, RULE, OR POLICY

Section 33-116, 33-2002, Idaho Code, IDAPA 08.02.03.109 (f)
20 U.S.C. 1411-1419; 34 CFR 300,100-300.174, Individuals with Disabilities Education Act (IDEA)

BACKGROUND/DISCUSSION

The Individuals with Disabilities Education Act (IDEA) sets certain timeframes for districts to complete particular activities such as initial evaluation for special education, reevaluation and dispute resolution. Timeframes help ensure that services for students are not unnecessarily delayed and reviewed appropriately. Federal regulation allows for 60 calendar days from the receipt of parent consent for initial evaluation to evaluate a student and determine eligibility for special education. After a student is found eligible for special education, regulations allow 30 calendar days to develop an individualized education program (IEP); implementation of that IEP must occur as soon as possible thereafter. Idaho's rules currently set a maximum 60 day timeline for student evaluation, determination of eligibility for special education, development of an IEP and implementation of that IEP. Idaho's timeline starts upon the receipt of parent consent for initial evaluation for special education, and excludes periods when regular school is not in session for five or more consecutive school days, or if all parties agree to an extension beyond 60 days. Idaho also requires once eligibility is determined, an IEP must be developed and implemented within 30 days (as long as those 30 days still fall within the 60 day timeframe). An example would be if a student was evaluated and found eligible by the 15th day, a district would then have 30 days (not 45 days) to ensure development and implementation of an IEP. If a student was evaluated and found eligible on the 35th day, the IEP would have to be developed and implemented within 25 days.

The Individuals with Disabilities Education Act (IDEA) only allows states to modify the timelines for times when a school is not in session for five (5) or more consecutive days for Eligibility for Special Education, this is not allowed for IEP's

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as specified in IDAPA 08.02.03 subsection 109.04. The timeline currently contained in this section violates IDEA.

IMPACT

If this Temporary Rule is not approved districts will be in violation of the Individuals with Disabilities Education Act (IDEA)

ATTACHMENTS

Attachment 1 – Temporary Rule change to IDAPA 08.02.03.109

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STAFF COMMENTS AND RECOMMENDATIONS

The language currently contained in IDAPA 08.02.03.109 violates the current requirements of the Individuals with Disabilities Education Act. Amending this language will bring Idaho into compliance with IDEA.

Temporary rules go into effect at the time of Board approval unless an alternative effective date is specified by Board action. To qualify as a temporary rule, the Governor must find the rule meets one of three criteria: provides protection of the public health, safety, or welfare; or is to come into compliance with deadlines in amendments to governing law or federal programs; or is conferring a benefit. These rules qualify as temporary rules as they will bring rules into compliance with amendments to governing law. The proposed amendments will bring Idaho into compliance with a Federal law and therefore meet the requirements of a Temporary rule.

Staff recommends approval.

BOARD ACTION

I move to approve the Temporary Rule amendment to IDAPA 08.02.03.109 as submitted in attachment 1 effective January 22, 2015.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

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**IDAPA 08
TITLE 02
CHAPTER 03**

08.02.03 - RULES GOVERNING THOROUGHNESS

109. SPECIAL EDUCATION.

- 01. Definitions.** The following definitions apply only to Section 109 of these rules. (4-5-00)
- a.** Adult Student. A student who is eligible for special education, is eighteen (18) years of age or older and to whom special education rights have transferred. (4-5-00)
 - b.** Department. State Department of Education. (4-5-00)
 - c.** Due Process Hearing. An administrative hearing that is conducted to resolve disputes. (3-29-10)
 - i.** Regular due process hearing regarding issues on any matter related to identification, evaluation, placement, or the provision of a free appropriate public education. (3-29-10)
 - ii.** For disputes concerning discipline for which shortened time lines are in effect, an expedited due process hearing may be requested in accordance with the Individuals with Disabilities Education Act. (3-29-10)
 - d.** Education Agency. Each school district and other public agency that is responsible for providing special education and related services to students with disabilities, including the Department of Juvenile Corrections and the Idaho School for the Deaf and Blind. (4-5-00)
 - e.** Governing Special Education Requirements. Sections 33-201, 33-2001 through 2002, 33-2004 through 2005, and 33-2010, Idaho Code; Section 109 of these rules; the Individuals with Disabilities Education Act (IDEA), Parts A and B, (20 U.S.C., Sections 1400-1419); IDEA Regulations (34 C.F.R. Part 300); Idaho Special Education Manual; and special education case law that sets precedence in Idaho. (3-29-10)
 - f.** Idaho Special Education Manual. Policies and procedures, as approved by the State Board of Education, that the State Department of Education is required to adopt to meet the eligibility requirements of 20 U.S.C, Section 1412 and are consistent with state and federal laws, rules, regulations, and legal requirements. (3-29-10)
 - g.** Special Education. Specially designed instruction as defined by the Individuals with Disabilities Education Act or speech-language pathology services to meet the unique needs of a special education student. (4-5-00)
- 02. Legal Compliance.** The State Department of Education and education agencies shall comply with all governing special education requirements. (4-5-00)
- a.** The Board of Trustees or other comparable governing body of each education agency shall adopt policies and procedures for providing special education services and obtain approval from the State Department of Education for the same. Department approval shall be based on current governing special education requirements. Each education agency shall revise its policies and procedures as necessary to conform with changes in governing special education requirements. (4-5-00)
 - b.** The State Department of Education shall provide education agencies with a sample set of policies and procedures that is consistent with governing special education requirements. The Department shall monitor all education agencies and private agencies who provide special education services to students with disabilities for compliance with governing special education requirements and adopted policies and procedures. (4-5-00)

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c. Each education agency shall ensure that charter schools and alternative schools located in its jurisdiction have nondiscriminatory enrollment practices. Each education agency shall ensure the provision of special education and related services to eligible students enrolled in charter and alternative schools in accordance with governing special education requirements. (4-5-00)

d. Each education agency contracting with a private school or facility shall ensure that the private school or facility is approved by the State Department of Education to provide special education services. The Department may approve a private school or facility to provide special education services upon application to the Department if it: (4-5-00)

i. Is an accredited school or a licensed rehabilitation center; and (4-5-00)

ii. Meets minimum health, fire and safety standards; and (4-5-00)

iii. Is nonsectarian; and (4-5-00)

iv. Provides special education services consistent with governing special education requirements. (4-5-00)

v. Any private school or facility aggrieved by the Department's final decision may appeal that decision to the State Board of Education. (4-5-00)

e. Education agencies shall employ special education and related services professional personnel using certification standards approved by the State Board of Education or licensing standards adopted by the Bureau of Occupational Licensing. Education agencies shall employ individuals who meet the highest entry-level standard that applies to a specific discipline unless there is a shortage of fully qualified candidates for a specific position. If there is a shortage of fully qualified candidates, the education agency shall hire the most qualified individual available who is making satisfactory progress toward meeting the highest entry-level standard within three (3) years. (4-5-00)

f. Education agencies may employ paraprofessional personnel to assist in the provision of special education and related services to students with disabilities if they meet standards established by the State Department of Education. (4-5-00)

g. Education agencies shall collect and report data as necessary to meet state and federal requirements concerning special education services, staff or students. Education agencies shall develop, implement and revise district improvement plans as necessary to improve results as measured by data on goals and indicators for the performance of special education students that are established by the State Department of Education in accordance with the Individuals with Disabilities Education Act. (4-5-00)

h. Education agencies shall establish a team process to problem solve and plan general education interventions to ensure that referrals to special education are appropriate. (4-5-00)

03. Eligibility for Special Education. The State Department of Education shall provide state eligibility criteria for special education services for categorical eligibility consistent with the Individuals with Disabilities Education Act. Education agencies shall consider eligibility under all disability categories set forth in the Idaho Special Education Manual with the exception of developmental delay, which is an optional category. If an education agency elects to use the developmental delay category, it shall consider developmental delay for students ages three (3) through nine (9) using the eligibility criteria adopted by the Department and set forth in the Idaho Special Education Manual. The total timeline from the date of receipt of written parental consent for an initial evaluation to the date of determination of eligibility for special education and related services must not exceed sixty (60) calendar days, excluding periods when regular school is not in session for five (5) or more consecutive school days, unless all parties agree to an extension. (4-7-11)

04. Individualized Education Programs. Each education agency shall develop an individualized

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education program (IEP) for each student who is eligible for special education. The IEP shall be implemented as soon as possible after it is developed. The total timeline from the determination that the student needs special education and related services to the date of implementation of the initial IEP shall not exceed thirty (30) calendar days, ~~excluding periods when regular school is not in session for five (5) or more consecutive school days, unless all parties agree to an extension.~~ A new IEP shall be developed at least annually, on or before the date the previous IEP was developed. (4-7-11)(____)

a. IEP team meetings shall be convened upon reasonable request of any IEP team member at times other than the annual review. If the education agency refuses to convene an IEP team meeting requested by a parent or adult student, the agency shall provide written notice of the refusal. (4-5-00)

b. Education agencies shall document the attendance of all participants at each IEP team meeting. Any participant who does not agree with an IEP team decision regarding a student's educational program may place a minority report in that student's file. A minority report shall not prevent implementation of an IEP team decision. (4-5-00)

c. The IEP team shall determine the student's placement in the least restrictive environment. (5-3-03)

d. At the discretion of the education agency, an individualized family service plan (IFSP) may be used in place of an IEP if: (4-5-00)

i. The child is ages three (3) through five (5), and (4-5-00)

ii. The child's parents are provided with a detailed explanation of the differences between an IFSP and an IEP, and (4-5-00)

iii. The child's parents provide written consent to use the IFSP, and (4-5-00)

iv. The IFSP is developed in accordance with IDEA Part B policies and procedures. (3-29-10)

v. Nothing in this part requires education agencies to develop IFSPs rather than IEPs for three (3) through five (5) year old nor to implement more than the educational components of the IFSP. (4-5-00)

e. When a student who has been determined eligible for special education, as indicated by a current IEP, transfers from one (1) Idaho education agency to another, the student is entitled to continue to receive special education services. The receiving education agency may accept and implement the existing IEP or may convene an IEP team meeting to develop a new IEP. If a new IEP cannot be developed within five (5) school days, or if the education agency wishes to re-evaluate the child, an interim (short-term) IEP shall be implemented pending development of the standard IEP. (4-5-00)

f. If a student who is eligible for special education in another state transfers to an Idaho education agency, the Idaho education agency shall request a copy of the student's most recent eligibility documentation and IEP within two (2) school days. Within five (5) school days of receipt of the eligibility documentation and IEP, the Idaho education agency shall determine if it will adopt the existing eligibility documentation and IEP. If the education agency disagrees with the existing eligibility documentation, or if the documentation is not available within a reasonable time period, consent for an initial assessment shall be sought. While the assessment and evaluation is in process, the education agency may implement an interim IEP if the parent or adult student agrees. If the parent or adult student does not agree to an interim IEP, the student shall be placed in general education. (4-5-00)

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